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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1940.

No. 307.

WILLIAM HOLLIS and SAM GOODMAN, Appellants,

vs.

CHARLES W. HUTT, Chairman; LOUIS BROWNLOW and W. GWYNN GARDINER, Commissioners of the District of Columbia, and as such Constituting the PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA, and the WASHINGTON GAS LIGHT COMPANY.

BRIEF FOR PUBLIC UTILITIES COMMISSION, D. C.

P. H. STEPHENS
CONRAD H. SYME,
Attorneys for Public Utilities Commission, D. C.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 397.

WILLIAM HOLLIS AND SAM GOODMAN, APPELLANTS,

vs.

CHARLES W. KUTZ ET AL., COMMISSIONERS, AND PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA, AND THE WASHINGTON GAS LIGHT COMPANY, APPELLEES.

BRIEF FOR THE PUBLIC UTILITIES COMMISSION.

By paragraphs 2 and 4 of the Public Utility Act it will be seen that it is the duty of the Utilities to furnish an adequate service at reasonable and non-discriminatory rates, and the Commission is given power to enforce this duty owed by the Utilities to the public. The Commission represents the public and all the public. The Utility represents itself and its own interest. There is no provision in the law under which an individual member of the community can become a party

in law to the controversy unless he files a petition as provided in paragraph 40 of the act.

The procedure by or before the Commission is so clearly described by the Court of Appeals (R., pp. 29-30) that it is unnecessary to repeat it here. This procedure is so complete that every right any individual consumer may have to be heard and his complaint adjudicated is fully preserved and capable of enforcement, as is also his right of appeal to the courts if dissatisfied with the final action of the Commission.

Neither of the complainants here appeared before the Commission.

To hold that any person who so desires may appeal from an order of the Commission, without having ever appeared before it, is to announce a doctrine as novel as it would be dangerous and its adoption would seriously impair the usefulness of the Commission.

If any citizen thinks he is injured by any order of the Commission establishing a rate or a service, he can complain to the Commission, and the Commission is bound to hear his complaint, after notice to the Utility whose rate or service is questioned thereby. If the person complaining does not agree with the order of the Commission made after such hearing, he is given his right of appeal in accordance with section 64 of the act.

If it could be admitted that the plaintiffs in this bill were parties to the proceedings before the Commission, their right of appeal is barred by the statute as to first order complained of, and as to the last order the Court could not hear an appeal from questions which the bill shows were not before the Commission for consideration.

The complainant, although he states in his bill that it is

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founded upon paragraph 64 of the Public Utility Acts, and reiterated this statement to the Court, and although the Court stated that it would consider the bill as so founded, now seeks to change ground and assert the jurisdiction of the Court on general equitable principles. Under this view the whole right of the plaintiff rests entirely upon the question of law, as to whether the Commission had the right or the jurisdiction to impose a rate upon the Government of the United States and the District of Columbia for gas which Congress had specifically fixed, by rendering it unlawful to use public funds for the payment of a higher rate.

If a case can be found where the Interstate Commerce Commission has been given jurisdiction to change a rate fixed by Congress for Government service, or where any State Commission has been given the right to change a rate fixed by the legislature of a State for the service of a State, it would be well that such case should be called to the attention of the Court. Counsel for the Commission has been unable to find such a case.

It is difficult to conceive of a Commission authorized by Congress fixing a rate for Government services unless specifically authorized so to do. It is even more difficult to conceive of the Public Utility Commission, composed of the Commissioners of the District of Columbia, who are the government of the District of Columbia, fixing a rate for the District of Columbia to pay. Such a situation would involve the Commissioners of the District of Columbia as a Public Utilities Commission, passing upon their responsibilities as Commissioners of the District of Columbia in their governing capacity—an inconceivable incongruity. It is beyond controversy that Congress, neither directly nor by

implication, gave the Public Utilities Commission any such authority, either as to the Government or the District. This question is fully discussed in the brief of the Washington Gas Light Co., and the Commission believes its statement of the law is correct.

Reduced to its last analysis, the entire bill of the plaintiff is based upon the proposition that the Commission ought to have increased the rate to the Government and to the District of Columbia, and, therefore, the sole question raised is as to whether it had the right to make such increase. If it did not, there is no ground for complaint. If it had such right and refused to exercise it, the only way the question could possibly be reached would be by some citizen complaining to the Commission that the rates fixed by it were unreasonable to the private consumer for this reason. Such complainant would be entitled to a formal hearing and to present to the Commission any facts warranting such a conclusion, and the Utility would be entitled to a reply. The Commission could then make an order, based upon the facts developed at such hearing, and from this order the complaining citizen is given by the law a right to appeal to this Court. This is the orderly process provided by the Public Utilities Law. It was not followed by the complainants in this case.

It follows from all of the above, in the first place, that the complainants were not parties to the proceeding before the Commission and not entitled to appeal therefrom.

In the second place, if these complainants had been parties, they neglected to avail themselves of their right of appeal within the time limited by the statute.

In the third place, if the complainants endeavor now, in

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spite of the allegations of their bill, to say that they are seeking ordinary equitable relief, they must base such relief, under the allegations of their own bill, upon the right of the Commission to change the rate of gas to the Government and the District of Columbia. If the Court found the Commission has no such right it must dismiss the bill. If the Court found that the Commission had such right it must likewise dismiss the bill, because the complainants must first avail themselves of the right which the law gives them of complaining to the Commission before they can appeal to a court of equity by virtue of the statute.

Respectfully submitted,

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Attorneys for the Defendant, the Public Utilities Commission of the District of Columbia.